IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO. 3742 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Mr.Amogh P. Parlikar, for the Petitioner
Mr. R. Narulla i/b. Jhangiani, Narulla & Associates for the respondents.

CORAM : F.I. REBELLO &
DR.D.Y.CHANDRACHUD, JJ.
DATED : 13TH SEPTEMBER, 2005

P.C.

. Rule. Heard forthwith. By order dated 16th April, 2004 a learned Judge of this Court acting as Designate under Section 11 of the Arbitration & Conciliation Act dismissed the application for want of prosecution as Bhatta had not been paid. The petitioner herein filed an application being Civil application No.42 of 2004 in Arbitration Petition No.19 of 2004. That was dismissed by order dated 10th August, 2004 on the ground that sufficient cause had not been shown. Against that the petitioner preferred a Writ Petition being Writ Petition No.8440 of 2004. That petition was withdrawn with liberty to the petitioner hereto to challenge the order dated 16th April, 2004 in appropriate proceedings.

2. By the present petition the petitioners have challenged the order dated 16th April, 2004. We have heard learned Counsel for the parties. After the Judgment of the Apex Court in **Konkan Railway Corporation Ltd. vs. Rani Construction Pvt. Ltd. (2002) 2 SCC 388** the law as settled is that the Arbtral Tribunal can be constituted even without notice to the respondents. Normally the respondents are heard before constituting the Tribunal. In the instant case an application was made under Section 11 to the learned Designate. Once such an application is made if there be an arbitration clause it is for the Designate to constitute the Arbitral Tribunal as expeditiously as possible. Mere procedural failure would not disentitle the learned Designate to constitute a Tribunal. In the light of that order dated 16th April, 2004 is set aside. The application is restored. Office to place the application before the learned Chief Justice who is presently hearing the applications under Section 11 of the Arbitration & Conciliation Act, 1996. Rule made absolute accordingly. No order as to costs. **(F.I. REBELLO, J.)**

(DR. D.Y.CHANDRACHUD, J)